

DRAFT – SUBJECT TO REVISION – FOR DISCUSSION ONLY – DRAFT
Version 11-18-04

Environmental Review Rules: Possible Major Process Revisions
Compiled by EQB Staff from Past Reform Study Efforts

Revision idea or issue	S/R*	E/L/N/Q*	Description/comments
EAW process revisions			
1. Make EAW a review in itself, not a tool to determine EIS need	S	L/N	No transition between EAW and EIS – do one or the other but not both for a project. Similar to current Energy Facility process. This has been a common theme for at least a decade whenever ER reform is discussed, but no advocates have ever put forth a detailed plan.
2. Require limited consideration of alternatives in EAWs	S	N	Could be prelude to more extensive analysis of alternatives in an EIS or a substitute for that. Another common theme. Could be part of change to nature of EAW process or just an addition to the EAW document. Note: current EAW form allows for “voluntary” consideration of alternatives already considered by the proposer.
3. ‘Certification’ of information used in an EAW	Probably S	Q	Environmental groups are concerned over quality of data in EAWs. This general concept includes both idea that EAW preparers, including consultants, would need to certify that the info is accurate and also idea that only ‘certified’ persons can fill out an EAW.
4. EQB staff “gatekeeper” authority to reject ‘incomplete’ EAWs for publication in Monitor	S	Q	Part of proposed 1995 HF 1015**.
5. Revise definition of “EAW” to include mitigation and alternatives	S	E	Part of proposed 1995 HF 1015** By itself, this revision would not necessarily cause significant changes in EAW procedures or content but would be a necessary part of making

***Legend for columns:**

S/R=statutory or rule change

E/L/N/Q=expands scope of review/limits scope of review/neutral re scope of review/re quality of review not its scope

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			EAW a review in itself
6. Provide for 90-day additional data gathering and review process after comment period	S	E/L	Part of proposed 1995 HF 1015** This would legalize and standardize common practice of extending official 30-day delay to gather additional info prior to EIS need decision. Could be controversial in that some persons may perceive as lessening likelihood of EIS being ordered in controversial cases
7. Require mitigation relied on in negative declaration to be implemented	S	Q	Part of proposed 1995 HF 1015** Almost everyone has been in support of this in past discussions
8. Mandatory public comment meetings for EAWs	S	E	Frequently advocated by citizen participation advocates
9. Establish authority for EQB Chair to remand negative declarations to RGU for reconsideration	S	E	Part of proposed 1995 HF 1015** Would provide a limited form of oversight – Chair could remand for cause, but only once; further challenge would be in court
EIS process revisions			
10. Alter scoping process to limit ‘scope creep’	R	N	May not be much more to be done beyond changes included in Housekeeping/Technical proposals (see #16 on “Housekeeping/Technical Other Procedural Changes” table)
11. Specify in rule a customized scope for each mandatory EIS category	R	N	Would require a lot of effort and assistance from agencies to develop scopes by project type
12. Drop requirements that most <u>private</u> project EISs cover: alternative sites or	S/R	L	Advocated by some development interests. All these topics are rarely/poorly addressed now anyway. Would probably noticeably reduce business opposition to preparing EISs,

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alternative ‘technologies’; socioeconomic impacts; and cumulative impacts			but likely would be opposed by environmental interests
13. Allow proposer’s agents to prepare draft EIS submissions – explicitly provide for this in rules	R	N/L	Provided for in some other states (e.g., CA) -- would be a potentially effective way to expedite draft EIS preparation (no RGU contracting steps) -- although would be controversial due to concern about ‘bias’ of preparers.
“3rd form” of review			
14. Create 3 rd form of document, intermediate between EAW and EIS	S/R*	N	One of the most frequently suggested revisions over the past decade. No one has ever laid out a detailed plan for how this would work, however. Level of controversy would depend on the nature of the new document *May be able to create by rule using substitute review authority
15. “Narrowly scoped document” as an alternative to ordering an EIS after an EAW	S/R*	N/L	PCA idea presented to 2002 Stakeholders’ group (although no serious discussion ever took place) *May be able to create by rule using substitute review authority
16. Extension of “AUAR- like” processes to other types/all types of projects	R*	N/L	Aggregate mining & feedlots possibilities for starters. Confusion over what “AUAR-like” implies could contribute to controversy *May be able to create by rule using substitute review authority
Petition revisions			
17. “Early notice” petition time limit concept	S	L	Part of proposed 1995 HF 1015** May not be used by enough projects to be worth trouble of adopting.

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			Likely controversial with environmental interests -- ‘devil may be in details’ of notice contents and timing – which could be played out in rulemaking if get statutory authority
Oversight			
18. EAW gatekeeper function			See EAW process changes
19. EQB Chair remand authority			See EAW process changes
20. Administrative alternatives to judicial review of RGU decisions	S	E	Could involve appeal to EQB, ALJ, other institutions Not promising option based on past consideration – likely would end up in court later anyway
Other process revisions			
21. Change venue of judicial appeals of state agency decisions to Court of Appeals	S	L	Strongly advocated by some state agencies in recent past. Environmentalists and citizen participation advocates have opposed in past because limits opportunities to challenge/makes challenges harder
22. Treatment of cumulative impacts: in EAWs, in EIS need decision, in EISs, in AUARs	R	N	Increasing pressure to do something to better define RGU responsibilities An intellectual challenge as well as likely controversial. What to do not at all clear – no obvious and easy solutions
23. RGU biases/RGU selection criteria	S/R	Q	Relates to oversight Hard to see any viable options to current system other than the “Massachusetts model” (single state agency, like EQB, would do all reviews).

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